

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
CONDITIONAL USE PERMIT REPORT (#FCU-13-10)
JUSTIN MCKERROW
NOVEMBER 12, 2013

This is a report to the Flathead County Board of Adjustment regarding a request from Justin McKerrow for a conditional use permit to allow for a guest house on the subject property. The subject property is located within the Little Bitterroot Lake Zoning District and is zoned 'LBL Little Bitterroot Lake.'

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on December 3, 2013 beginning at 6:00 P.M. in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this file are available for public inspection in the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

This space is reserved for an update regarding the November 26, 2013 Little Bitterroot Lake Land Use Advisory Committee review of the proposal.

B. Board of Adjustment

This space is reserved for an update regarding the December 3, 2013 Flathead County Board of Adjustment review of the proposal.

II. GENERAL INFORMATION

A. Application Personnel

i. Landowner

Justin McKerrow
15 Mountain Park Lane
Kalispell, MT 59901

ii. Applicant

F.J. di Stefano
6 Sunset Plaza
Kalispell, MT 59901

B. Property Location and Size

The subject property is located at 1750 Bitterroot Lane in Marion, MT (see Figure 1 below). The property is approximately 0.50 acres in size and can be legally described as Assessor's Tract 1-D of Little Bitterroot Lots in Section 18, Township 27 North, Range 24 West, P.M.M., Flathead County, Montana.

Figure 1: Subject property (outlined in red)



C. Existing Land Use(s) and Zoning

The property is located within the Little Bitterroot Lake Zoning District and is zoned 'LBL Little Bitterroot Lake.' LBL is a development code, *"Designed to implement the Little Bitterroot Lake Neighborhood Plan by protecting the quality, character and openness of Little Bitterroot Lake and the surrounding neighborhood and by providing guidance for future development."* The property is currently developed as residential and contains a cabin, an old boat house and a shed. The majority of the property is open space and covered with trees and shrubs.

D. Adjacent Land Use(s) and Zoning

The property is located on the shores of Little Bitterroot Lake. Land surrounding the subject property to the north, south, and west is similarly zoned LBL and east of the property is Little Bitterroot Lake. The general character of the surrounding area is residential, with vacation and single family homes.

Figure 2: Zoning surrounding the subject property (outlined in red)



E. Summary of Request

The applicant is requesting a Conditional Use Permit to allow for a guest house to be placed on the subject property pursuant to Section 7.08.050 of the Flathead County Zoning Regulations (FCZR). The applicant proposes to construct living quarter with two bedrooms on the second floor of a garage and the existing one bedroom cabin would be utilized as a guest house. The garage and living quarters will be a total of 1,936 square feet and the existing cabin contains one bedroom and is 961 square feet.

The applicant has stated that in the future the cabin will be replaced by a new principal dwelling. The new dwelling will be 4 to 5 bedrooms and would need to be larger than the currently proposed living quarters. At that time the new dwelling will be considered the principal dwelling and the currently proposed garage and two bedroom living quarter would become the guest house. The cabin would need to be removed from the property in order to construct the new dwelling. The two bed room living quarter will be built to meet the definition of guest house in order to comply with the regulation when the new house is built.

Guest house is defined under Section 7.08.050 FCZR as “A *detached structure which is accessory to a one family dwelling with not more than two bedrooms, which shall be used and/or designed for use primarily by guests and/or servants. One guesthouse is allowed per tract of record.*” The guest house may not be rented or leased. The placement of a guest house in a LBL zone requires the issuance of an Conditional Use Permit, the review of which is subject to specific guidelines set forth under Section 2.06.080 FCZR regarding criteria for the issuance of a Conditional Use Permit.

F. Compliance With Public Notice Requirements

Notification was mailed to property owners within 150 feet of the subject property on November 12, 2013, pursuant to Section 2.06.040(3) of the Flathead County Zoning Regulations. Legal notice of the public hearing on this application was published in the November 17, 2013 edition of the Daily Interlake.

G. Agency Referrals

Referrals were sent to the following agencies on October 22, 2013:

- Flathead County Road and Bridge Department
 - Reason: The property is located on a county road, and has the potential to impact county facilities.
- Flathead County Solid Waste (FCSW)
 - Reason: The property is located within the department’s jurisdiction, and has the potential to impact county facilities.
- Marion Fire Department
 - Reason: The property is located within the department’s jurisdiction, and has the potential to impact Marion Fire Department response.
- Flathead City-County Environmental Health Department
 - Reason: The property is located within the department’s jurisdiction.
- Flathead County Weeds and Parks Department
 - Reason: The property is located within the department’ jurisdiction and new construction could lead to the development of weeds on the subject property.
- Bonneville Power Administration
 - Reason: The BPA has requested a copy of all agency referrals.

III. COMMENTS RECEIVED

A. Public Comments

Following the required comment period established under Section 2.06.045(2) FCZR, this office received no written or verbal comments regarding the proposed use on the subject property.

B. Agency Comments

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Bonneville Power Administration
 - Comment: “In reviewing the proposed plan, it appears this petition will not impact any BPA facilities located within this area. BPA does not have any objections to the approval of this request at this time.” Letter dated October 29, 2013.
- Flathead County Solid Waste District
 - Comment: “The District views no negative impact with solid waste issues at this time. The District request that all solid waste generated at this proposed location be hauled by a private hauler.” Letter dated October 30, 2013.
- Flathead County Weed, Parks and Recreation
 - Comment: “The Flathead County Weed District office assists landowners and developers when an application is made to the Planning and Zoning Department that will result in soil disturbance. It is the landowners’ responsibility to control noxious weeds on their land – MCA 7-22-2116. A noxious weed is legally defined as ‘any exotic plant species that may render land unfit for agriculture, forestry, livestock, wildlife or other beneficial uses, or that may harm native plant communities.’ Most noxious weeds thrive when soil is disturbed. Some can grow from root parts, as well as seeds that become exposed. Please refer to the enclosed Weed Inspection Report that includes Weed Control Suggestions for this subdivision. A Soil Disturbance & Management Plan is enclosed for you to complete and return to our office within 10 days. This is required prior to final plat approval and before construction and/or disturbance begins.” Letter dated November 12, 2013.
- Flathead City-County Health Department
 - Comment: “This property was created in 1956 by deed. Therefore, development must comply with Flathead County Sewage Treatment System Regulations. In accordance with 4.6 Minimum lot size requirement – ‘Minimum lot size requirement - A proposal to use both an individual onsite wastewater treatment system and water supply for each single family residence or 700 gpd of design wastewater flow for commercial and other non-residential uses on a lot which is smaller than 1 acre may be approved only if all regulatory requirements including separations and setbacks can be met. Parcels for which additional development is proposed must provide:
 1. at least 1 additional acre for each single family residence or 700 gpd of design wastewater flow for commercial and other non-residential uses if served by an individual water supply and sewer service or,
 2. at least an additional 20,000 ft² for each single family residence or 700 gpd of design wastewater flow for commercial and other non-residential

uses if either the water or sewer is provided by a shared, multi-user or public system.’

In order to comply with the minimum lot size requirement, the addition of a second dwelling to the proposed lot would require an additional 20,000 ft² be added to the existing lot to comply with Flathead County Sewage Treatment System Regulations.” Letter Dated November 12, 2013.

- Flathead County Road and Bridge Department
 - Comment: “At this time the County Road Department does not have any comments on this request.” Letter dated October 28, 2013.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Sections 2.06.080 and 2.06.100 of the Flathead County Zoning Regulations, what follows are criteria required for consideration of a Conditional Use Permit and suggested findings of fact based on review of each criterion.

A. Site Suitability

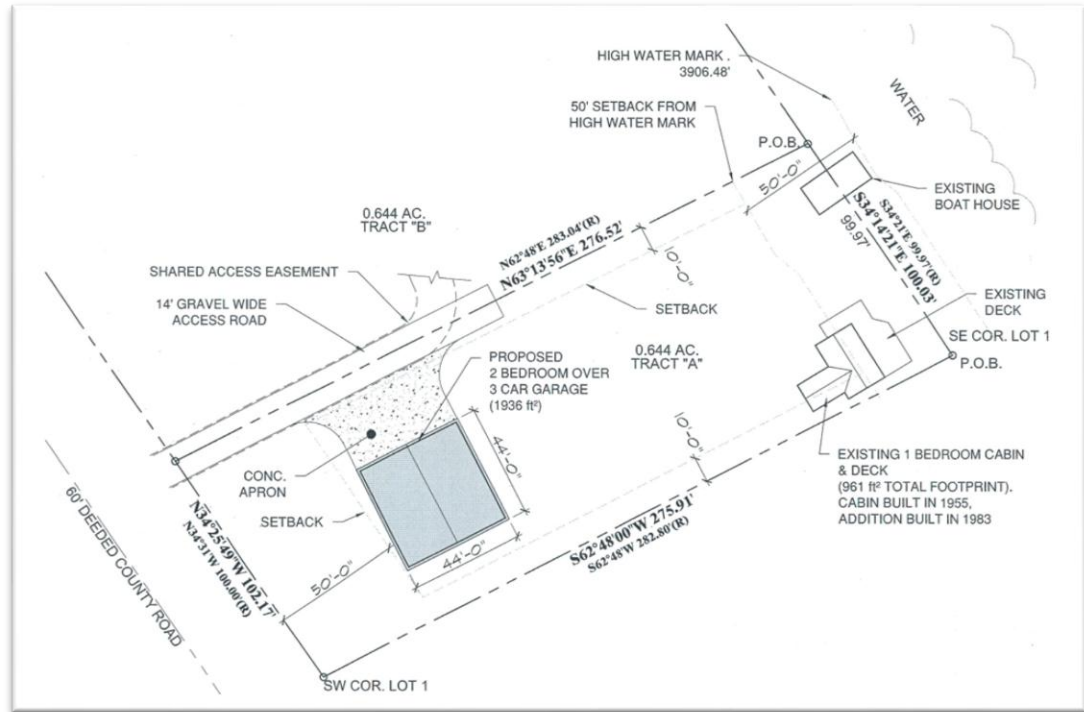
i. Adequate usable space

The subject property is approximately 0.50 acres in size and currently developed as residential with a cabin, a boat house, two sheds, and a fort. The applicant proposes to place a two bedroom living quarter on the second floor of the proposed 3 car garage. The garage and living quarters will be a total of 1,936 square feet. The existing cabin contains one bedroom and is 961 square feet. The other existing buildings cover approximately 600 square feet. The total lot coverage from the buildings is 3,498 square feet. The proposed parking apron covers 1,289 square feet which is counted towards the permitted lot coverage in the Little Bitterroot Lake zoning. The LBL designation requires a minimum of 50% of the lot left as open space for a lakefront lot. The total lot covered is approximately 4,787 square feet or 21.9% of the lot, leaving 78% of the lot open space.

The applicant has stated that in the future the cabin will be replaced by a new principal dwelling. The applicant has stated the new principal dwelling would be between 1,500 and 2,500 square feet, contain 4 to 5 bedrooms and located on the east side of the property. The new principal dwelling would need to be larger than the currently proposed living quarters 1,936 square feet. Assuming the new principal dwelling is 2,500 square feet the total lot coverage would be 6,326 square feet or 29.0% of the lot, leaving 71% of the lot open space.

The setbacks for all structures within the LBL zoning are 50 feet for front yard, 10 feet for the side yard and 20 feet for the rear and side corner yard. An additional 50 foot setback is required from the average high water line of Little Bitterroot Lake. The property is located on Little Bitterroot Lake and the rear setback would be 50 feet. Currently the cabin and the boat house are within the setbacks. According to the applicant the cabin was built in 1955 and an addition was added in 1983. According to data from the Montana Cadastral website the boat appears to have been built in 1981. The Little Bitterroot Lake Zoning District was adopted in 1996; therefore both the cabin and boat house would be non-conforming structures. Based upon staff’s site visit and the submitted site plan, it appears the subject property has adequate useable space to accommodate the placement of the new buildings and parking apron in compliance with the setback and open space requirements of the LBL zone.

Figure 3: Site plan



ii. Adequate access

The subject property is accessed directly via Bitterroot Lane, a gravel two-lane local county road within a 60 foot easement. Bitterroot Lane appears to be maintained with adequate site distances for traffic entering and exiting the property. The property has one access via Bitterroot Lane. The driveway appears to be approximately 8 feet wide and unimproved. The applicant is proposing to construct a 14 foot wide shared gravel driveway with the property owner to the north. The applicant will be conditioned to contact the Flathead County Road and Bridge Department for a revised approach permit.

Figure 4: Driveway looking north on Bitterroot Lane



iii. Absence of environmental constraints

The subject property is relatively flat with no streams, creeks or wetlands. The property is located adjacent to Little Bitterroot Lake and would be required to comply with the Lake and Lakeshore Protection Regulations when doing any work landward of the 20 feet of the average high water elevation generally referred to as the Lakeshore Protection Zone (LPZ). The setbacks for Little Bitterroot Lake designation require structures to be 50 feet from the lake well outside the LPZ.

The subject property is located on FEMA FIRM Panel 30029C2200G, an unprinted panel. Based on the current topography there appears to be no environmental constraints applicable to the subject property.

Finding #1 – The site appears suitable for the proposed use because there is adequate usable space, there is adequate access via a local county road, the approach permit will be re-reviewed by Flathead County Road and Bridge Department, and there are no apparent environmental constraints.

B. Appropriateness of design

i. Parking scheme

Two parking spaces are required for the single family home and two parking spaces are required for the proposed guest house per Section 6.02.010 FCZR. The applicant is proposing a three car garage in addition to the living quarters. The site plan also shows a concrete pad in front of the garage that could accommodate parking for three additional cars. Based on staff's site visit and the submitted site plan there appears to be adequate room in the proposed driveway and garage to accommodate four parking spaces.

ii. Traffic circulation

Ingress and egress to the subject property will be via a private driveway from Bitterroot Lane. The driveway appears to be approximately 8 feet wide and unimproved and would not allow for two-way traffic. The applicant is proposing to

construct a 14 foot wide shared gravel driveway with a parking pad in front of the garage that would accommodate parking and the turning radius of a car.

Finding #2 – The proposed guest house appears to be appropriately designed because and the proposed parking and traffic circulation appears sufficient to serve the proposed use on a limited basis.

iii. Open space

The subject property is approximately 0.50 acres in size and currently developed as residential with a cabin, a boat house, two sheds, and a fort. The applicant proposes to place a two bedroom living quarter on the second floor of the proposed 3 car garage. The garage and living quarters will be a total of 1,936 square feet. The existing cabin contains one bedroom and is 961 square feet. The other existing buildings cover approximately 600 square feet. The total lot coverage from the buildings is 3,498 square feet. The proposed parking apron covers 1,289 square feet which is counted towards the permitted lot coverage in the Little Bitterroot Lake zoning. The LBL designation requires a minimum of 50% of the lot left as open space for a lakefront lot. The total lot covered is approximately 4,787 square feet or 21.9% of the lot. Over 78% of the lot will remain open space as a result of this proposal.

The applicant has stated that in the future the cabin will be replaced by a new principal dwelling. The applicant has stated the new principal dwelling would be between 1,500 and 2,500 square feet, contain 4 to 5 bedrooms and located on the east side of the property. The new principal dwelling would need to be larger than the currently proposed living quarters 1,936 square feet. Assuming the new principal dwelling is 2,500 square feet the total lot coverage would be 6,326 square feet or 29.0% of the lot. Over 71% of the lot will remain open space as a result of this proposal.

Finding #3 – The proposed use appears to be adequately designed for open space because 71% of the lot will be left as open space with the construction of the living quarters and 78% will remain open space when the new principal dwelling is constructed.

iv. Fencing/screening

Currently there is no fencing on the subject property and the applicant is not proposing any additional fencing or screening with this proposal. The Little Bitterroot Lake designation and the guest house do not require any fencing or screening.

v. Landscaping

The property is heavily forested and the applicant has stated, “efforts will be made to retain major trees and preserve the landscaping.” No landscaping is required for the guest house based on the applicable zoning regulations.

vi. Signage

There are no existing signs on the subject property and the applicant is not proposing additional signage for the proposed use.

vii. Lighting

Currently there is exterior lighting on the existing cabin and the applicant is proposing outdoor lighting for the proposed structure. The applicant is proposing to meet the

Dark Sky's provision in the Little Bitterroot Neighborhood Plan. The lighting provisions from the Little Bitterroot Neighborhood Plan Development Code have been adopted as the zoning for the Little Bitterroot area. The applicant shall be required to conform to the lighting standards set forth in Section 3.33.110 and Section 5.12 FCZR and will be conditioned accordingly and inspected after one year.

Finding #4 – The proposed use appears to be adequately designed because the applicant is not proposing any signage, fencing, or landscaping beyond what is currently present and proposed lighting will be shielded or hooded as required.

C. Availability of Public Services and Facilities

i. Sewer

The property currently utilize on-site septic. The applicant has stated, "The on site septic system will be expanded and a new system will be engineered and submitted to the DEQ for approval." Comments received from the Flathead City-County Environmental Health Department state, "This property was created in 1956 by deed. Therefore, development must comply with Flathead County Sewage Treatment System Regulations. In accordance with 4.6 Minimum lot size requirement – 'Minimum lot size requirement - A proposal to use both an individual onsite wastewater treatment system and water supply for each single family residence or 700 gpd of design wastewater flow for commercial and other non-residential uses on a lot which is smaller than 1 acre may be approved only if all regulatory requirements including separations and setbacks can be met. Parcels for which additional development is proposed must provide:

1. at least 1 additional acre for each single family residence or 700 gpd of design wastewater flow for commercial and other non-residential uses if served by an individual water supply and sewer service or,
2. at least an additional 20,000 ft² for each single family residence or 700 gpd of design wastewater flow for commercial and other non-residential uses if either the water or sewer is provided by a shared, multi-user or public system.'

In order to comply with the minimum lot size requirement, the addition of a second dwelling to the proposed lot would require an additional 20,000 ft² be added to the existing lot to comply with Flathead County Sewage Treatment System Regulations."

The systems would be required to be reviewed and approved by the Flathead City-County Environmental Health Department prior to installation and operation. This will be conditioned and verified after one year.

ii. Water

The applicant stated, "There are existing water rights that allow the use of lake water for domestic use." The applicant shall be required to contact the Flathead City-County Environmental Health Department to determine if any re-review will be required. This will be conditioned and verified after one year.

iii. Storm Water Drainage

The applicant is proposing to locate the new house on the property which would increase the impervious surface and storm water run-off. Currently storm water run-off is handled through on-site absorption and will continue to be handled through on-site absorption in the future. The applicant shall contact the Flathead City-County

Environmental Health Department to determine if re-review will be required. This will be conditioned and verified after one year.

Finding #5 – The guest house appears to have acceptable impacts on public services and facilities because the storm water will be managed through on-site absorption and the property has existing water rights to use lake water and an existing private septic system which will be reviewed by Flathead City-County Environmental Health Department.

iv. Fire Protection

The subject property is located in the Wildlife Urban Interface and the Fire District Priority Area. The request is to place a guest house on the subject property in addition to a single family home. The subject property is currently served by the Marion Fire Department, and is located approximately 4.5 miles west of the existing fire station. Because of the volunteer nature of the fire department longer response times are anticipated. The guest house would be used on a limited basis and is not likely to hinder the availability of fire protection.

v. Police Protection

The property would be served by the Flathead County Sheriff's Department. Due to the rural area of the property it is anticipated response times in the event of an emergency would be long and delays are possible. The guest house would be used on a limited basis and is not likely to hinder the availability of police protection.

vi. Streets

The subject property is located on Bitterroot Lane, a gravel two-lane local county road within a 60 foot easement. The property currently has access via Bitterroot Lane. Bitterroot Lane appears to be maintained with adequate site distances for traffic entering and exiting the property. The applicant will be conditioned to contact the Flathead County Road and Bridge Department for a revised approach permit.

Finding #6 – The guest house appears to have acceptable impacts on public services and facilities because the guest house will used on a limited basis and the Marion Fire Department and Flathead County Sheriff provide services to the subject property, and the property is accessed by Bitterroot Lane, a local county road.

D. Immediate Neighborhood Impact

i. Excessive traffic generation

The guest house is anticipated to generate a minimal amount of traffic because the proposed use is residential and not used on a regular basis. The guest house will not be used full time. The guest house would be similar to single family dwelling as such the guest house has the potential to generate 10 average daily trips when in use.

The most recent traffic counts for Bitterroot Lane were taken in August of 2003 by the Flathead County Road and Bridge Department at the Bitterroot Drive intersection. The average daily trips on Bitterroot Lane was determined to be 273 at that time. The vehicle trips generated as a result of this proposal amounts to approximately 0.4% increase from the 2003 counts. The approach permit will be re-reviewed as mitigation.

ii. Noise or vibration

While some noise and vibration will naturally result from construction activities, these impacts will be limited in duration and should not negatively impact the surrounding

area. No noise or vibration beyond what is typical for a residential area is anticipated as a result of the proposed guest house.

iii. Dust, glare or heat

Based on the submitted application the location of the guest house it is anticipated to create no adverse impacts on the surrounding neighborhood as a result of dust, glare, or heat. The traffic generated from this proposal may create some dust as Bitterroot Lane and the driveway is currently gravel. The traffic generated by the proposed use will be consistent with existing traffic levels for the neighborhood and mitigation (such as oiling) is not required.

iv. Smoke, fumes, gas, or odors

No smoke, fumes, gas or other odors are anticipated to be generated by the guest house other than those typical of a single family residence.

v. Inappropriate hours of operation

Hours of operation are not applicable because the proposed use is residential not commercial.

Finding #7 – The proposed use is not anticipated to impact the surrounding neighborhood because the use is not anticipated to generate excessive traffic out of character with the neighborhood, create noise, vibration, glare, heat, smoke, fumes, gas or odors out of character with the residential area, and no hours of operation are required due to the nature of the proposed use.

V. SUMMARY OF FINDINGS

1. The site appears suitable for the proposed use because there is adequate usable space, there is adequate access via a local county road, the approach permit will be re-reviewed by Flathead County Road and Bridge Department, and there are no apparent environmental constraints.
2. The proposed guest house appears to be appropriately designed because and the proposed parking and traffic circulation appears sufficient to serve the proposed use on a limited basis.
3. The proposed use appears to be adequately designed for open space because 71% of the lot will be left as open space with the construction of the living quarters and 78% will remain open space when the new principal dwelling is constructed.
4. The proposed use appears to be adequately designed because the applicant is not proposing any signage, fencing, or landscaping beyond what is currently present and proposed lighting will be shielded or hooded as required.
5. The guest house appears to have acceptable impacts on public services and facilities because the storm water will be managed through on-site absorption and the property has existing water rights to use lake water and an existing private septic system which will be reviewed by Flathead City-County Environmental Health Department.
6. The guest house appears to have acceptable impacts on public services and facilities because the guest house will used on a limited basis the Marion Fire Department and Flathead County Sheriff provide services to the subject property, and the property is accessed by Bitterroot Lane, a local county road.

7. The proposed use is not anticipated to impact the surrounding neighborhood because the use is not anticipated to generate excessive traffic out of character with the neighborhood, create noise, vibration, glare, heat, smoke, fumes, gas or odors out of character with the residential area, and no hours of operation are required due to the nature of the proposed use.

VI. CONCLUSION

Upon review of this application, the request to allow for a guest house on the subject property is generally supported by the review criteria and the Findings of Fact listed above. Should the Flathead County Board of Adjustment choose to adopt staff report FCU-13-10 as Findings of Fact and approve the conditional use permit, the following conditions would ensure compliance with the review criteria and appropriate measures to mitigate impacts:

VII. CONDITIONS OF APPROVAL

1. The proposed use shall be in substantial conformance with the application and site plan submitted and approved by the Flathead County Zoning Administrator; changes or modifications to the approved use and/or site plan as proposed by this application shall not be affected unless specifically reviewed and approved by the Zoning Administrator as an amendment to this permit. Such a review requires a Conditional Use Permit review process.
2. The guest house shall be used solely for the purpose defined in Section 7.05.110 of the Flathead County Zoning Regulations. The guest house shall not be rented, leased or occupied by anyone other than the person(s) identified in the application.
3. The guest house shall be located in accordance with the minimum yard and maximum height requirements of the LBL zoning district, pursuant to Section 3.33.050 of the Flathead County Zoning Regulations.
4. The applicant shall provide 2 parking spaces for the guest house as required under Section 6.02.010 of the Flathead County Zoning Regulations.
5. The proposed use shall be reviewed and approved by the Flathead City-County Department of Environmental Health in order to obtain a well, storm drain and septic permit applicable to the guest house. A copy of the approved permit shall be available upon request by Flathead County Planning and Zoning.
6. The proposed use shall be re-reviewed by the Flathead County Road and Bridge Department to obtain an updated approach permit.